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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
SHINGLES, KRISTIE D	

ART UNIT	PAPER NUMBER
2141	

DATE MAILED: 12/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/775,585	CRANDALL, E. STEPHEN	
	Examiner	Art Unit	
	Kristie Shingles	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-7,9,10,14,16-20,22,23 and 25-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-7,9,10,14,16-20,22,23 and 25-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant has amended claims 1, 3, 9, 14, 16 and 18.
Claims 2, 8, 11-13, 15, 21 and 24 have been cancelled.
Claims 25-28 are new.

Claims 1, 3-7, 9, 10, 14, 16-20, 22, 23 and 25-28 are pending.

Response to Arguments

1. Applicant's arguments with respect to claims 1 and 14 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112, second paragraph

2. **Claim 25** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 recites the limitation "the stored program information" in line 1 of the claim language. There is insufficient antecedent basis for this limitation in the claim.

Clarification and/or correction are required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. **Claims 1, 3-7, 9, 10, 14, 16-20, 22, 23 and 25-28** are rejected under 35 U.S.C. 102(e) as being unpatentable by *Frerichs et al* (USPN 6,684,249) in view of *Kenner et al* (USPN 6,269,394).

a. **Per claims 1 and 14** (differ only by statutory class), *Frerichs et al* teach the method for receiving performance information over a network for generating a pseudo-live performance, the method comprising:

- detecting a need for the performance information (col.2 lines 31-37, col.3 line 66-col.4 line 57, col.6 lines 18-66, col.7 lines 1-45, col.10 lines 60-65, col.11 lines 37-42, col.13 lines 48-64 and col.15 lines 40-6; provision for accessing user profiles, detecting and storing user activity and requests);

- selecting a process for obtaining the needed performance information (col.6 lines 62-col.7 line 25, col.8 lines 30-40, col.9 lines 39-54 and col.13 line 33-col.14 line 52);

- executing the process for obtaining the needed performance information (col.9 lines 39-54, col.13 line 33-col.14 line 52 and col.9 lines 12-26); and

- generating the pseudo-live performance by mixing information corresponding to one or more portions of the needed performance information with other information (col.4 lines 44-56, col.7 lines 35-58, col.8 line 64-col.9 line 11, col.9 lines 27-38 and col.10 line 48-col.12 line 39).

Yet *Frerichs et al* fail to explicitly teach detecting a need for the performance information by determining that stored performance information is out-of-date. However, *Kenner et al* teach the storage of video data that includes expiration times, in order to determine when the video is out-of-date for updating or purging from the database (col.4 line 67-col.5 line 2, col.10 lines 19-31, col.14 lines 54-67, col.17 lines 4-10, col.24 lines 29-39, col.25 lines 10-55).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Frerichs et al* and *Kenner et al* for the purpose of detecting the need for performance data by determining that the stored performance data is out-of date; because it provisions a mechanism for updating data based on its expiration time or version code. Determining that data is old or out-of-date is a common technique used in the art for efficiently updating storage and keeping track of the current version of stored data.

b. **Per claim 3**, *Frerichs et al* and *Kenner et al* teach the method of claim 1, *Frerichs et al* further teach the method further comprising: accessing a profile wherein the profile indicates one or more of: a type of information desired by an end-user; a schedule of an end-user; and scheduled times at which information is transmitted by a performance transmitter (col.2 lines 21-37, col.8 lines 41-63, col.9 lines 39-54, col.14 lines 40-52 and col.15 line 40-col.16 line 23).

c. **Claim 16** is substantially similar to claim 3 and is therefore rejected under the same basis.

d. **Per claim 4,** *Frerichs et al* and *Kenner et al* teach the method of claim 1, *Frerichs et al* further teach wherein the selecting a process comprises determining whether a performance transmitter can receive an information request (col.10 lines 25-44 and col.11 lines 22-53).

e. **Claim 17** is substantially similar to claim 4 and is therefore rejected under the same basis.

f. **Per claim 5**, *Frerichs et al* teach the method of claim 4, wherein the determining whether a performance transmitter can receive an information request comprises one or more of: transmitting a query signal to the performance transmitter; passively receiving a signal from the performance transmitter; and accessing a profile (col.10 lines 24-53 and col.11 line 25-col.12 line 17).

g. **Claim 18** is substantially similar to claim 5 and is therefore rejected under the same basis.

h. **Per claim 6**, *Frerichs et al* teach the method of claim 4, further comprising: generating an information request; and transmitting the request to the performance transmitter via the network (col.3 line 66-col.4 line 43, col.10 lines 24-53 and col.11 line 25-col.12 line 17).

i. **Claim 19** is substantially similar to claim 6 and is therefore rejected under the same basis.

j. **Per claim 7**, *Frerichs et al* and *Kenner et al* teach the method of claim l, *Frerichs et al* further teach wherein the selecting a process comprises determining an appropriate time to receive information from a performance transmitter (col.6 line 62-col.7 line 66, col.8 lines 41-63, col.13 line 48-col.14 line 39 and col.16 lines 10-30).

k. **Claim 20** is substantially similar to claim 7 and is therefore rejected under the same basis.

l. **Per claim 9**, *Frerichs et al* and *Kenner et al* method of claim 1, *Frerichs et al* further teach wherein generating the pseudo-live performance comprises: retrieving the other information; decoding one or more commands of the other information; and performing one or more tasks instructed by the commands (col.3 line 66-col.4 line 56, col.6 lines 3-51, col.7 line 6-col.8 line 67, col.9 line 12-col.10 line 65 and col.15 line 40-col.16 line 41).

m. **Claim 22** is substantially similar to claim 9 and is therefore rejected under the same basis.

n. **Per claim 10**, *Frerichs et al* method of claim 9, wherein the one or more commands includes one or more of programming commands that execute a software program, housekeeping commands that load, delete, change or overlay stored information, and performance commands that reproduce stored information from one or more specified locations of a storage device (col.3 line 66-col.4 line 56, col.6 lines 20-51, col.7 lines 6-64, col.9 line 2-col.10 line 65, col.11 lines 22-65 and col.13 lines 48-64).

o. **Claim 22** is substantially similar to claim 10 and is therefore rejected under the same basis.

p. **Per claim 25,** *Frerichs et al* and *Kenner et al* method of claim 1, *Kenner et al* further teach wherein determining hat the stored program information is out-of-date comprises: transmitting a query to determine a time of a latest update of the stored performance information (col.12 lines 35-38, col.23 lines 5-10); receiving the time of the latest update of the stored performance information in response to the transmitting of the query (col.14 lines 54-67, col.19 lines 5-14, col.30 liens 31-29); accessing a time-stamp of the stored performance information (col.10 lines 19-31, col.24 lines 29-39); and determining whether the time-stamp of the stored performance information matches the time of the latest update of the stored performance information (col.10 lines 19-31, col.17 lines 4-10, col.25 lines 44-55).

q. **Claim 26** is substantially similar to claim 25 and is therefore rejected under the same basis.

r. **Per claim 27,** *Frerichs et al* and *Kenner et al* method of claim 1, *Kenner et al* further teach wherein the performance information includes multimedia performance information (col.4 lines 44-45, col.6 lines 4-60, col.27 lines 52-63).

s. **Claim 28** is substantially similar to claim 27 and is therefore rejected under the same basis.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: *Karasudani et al* (USPN 6,701,061), *Contolini et al* (USPN 6,643,620), *Williams et al* (USPN 5,945,988), *Helferich* (USPN 6,462,646), *Mandeberg et al* (USPN 6,038,545), *Hendricks et al* (USPN 5,600,573).

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie Shingles whose telephone number is 571-272-3888. The examiner can normally be reached on Monday-Friday 8:30-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kristie Shingles
Examiner
Art Unit 2141

kds

RUPAL DHARIA
SUPERVISORY PATENT EXAMINER